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NO. 84 _____

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM 1984

IN RE: ELIJAH W. RATCLIFF,

PETITIONER

PETITION FOR EXTRAORDINARY RELIEF DIRECTED TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

PETITION FOR WRIT OF MANDAMUS

PETITIONER, PRO SE

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BEST AVAILABLE COPY

NO. 84-_____

IN RE: ELIJAH W. RATCLIFF, PETITIONER

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

PETITION FOR WRIT OF MANDAMUS

TO THE HONORABLE WARREN E. BURGER, CHIEF JUSTICE, AND THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

QUESTIONS PRESENTED

Developments in the subject litigation presently pending in the United

States District Court for the Southern District of Texas, Houston Division, Cr. No. H-85-28, raise pertinent issues as follows:

I. Whether a fabricated criminal charge of threatening a Revenue Officer may be maintained under Title 18, United States Code, Section 1505, without refuting the accused's contention that he has confronted no such Officer engaged in the due and proper administration of the law at any time pertinent to the fabricated criminal charges.

II. Whether a fabricated criminal charge of threatening a Revenue Officer may be maintained under Title 26, United States Code, Section 7212(a), without

refuting the contention of the accused that he has encountered no such Officer engaged in the due and proper administration of the law at any time pertinent to the fabricated criminal charges.

III. Whether the revelation of a continued conspiracy or campaign by influential officials and individuals within the State of Texas and particularly the Southern District of Texas calculated to discredit and economically destroy the accused justifies the transfer of the criminal proceeding from the United States District Court for the Southern District of Texas to the United States District Court for the Southern

District of New York where significant First Amendment rights precipitating the subject criminal charges were currently exercised.

IV. Whether Rules 15(a) and 16(a)(1)(A) of the Federal Rules of Criminal Procedure establish a right in an accused to examine statements of the most serious witness against him for exculpatory and impeachment purposes.

V. Whether Rule 16(a)(1)(A) of the Federal Rules of Criminal Procedure establishes a right in one falsely charged with threatening a Revenue Officer to examine the Government's compilation of (1) returns; (2) schedules; (3) audits; (4) amended

returns; and (5) other pertinent data within the Government's custody and control which can serve an exculpatory or impeachment function in behalf of the accused.

VI. Whether Government attorneys consistent with Article VI of the Amendments to the Constitution of the United States may arbitrarily, unreasonably and capriciously pursue dilatory tactics in contravention of the accused's right to a fair, impartial and speedy trial.

VII. Whether dismissal of the immediate action below on grounds of recalcitrant abuses of Sixth Amendment rights is proper.

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JURISDICTION

The extraordinary relief sought through this Petition evolves from Title 28, United States Code, Sections 1254, 1291, 1343, 1443, 1447(d) and 1651(a), in conjunction with Fed. Rules Civ. Proc., Rule 60(b), 28 U.S.C.; Title 42, United States Code, Sections 1981, 1982, 1983 and 1985; and United States Code, Const. Amends. I, V, VI and XIV.

The subject charge is filed as having been fabricated on January 10, 1985, and it was extended to an undated Indictment filed as of February 7, 1985.

This Petition for Writ of Mandamus is authorized by U.S. Sup. Ct. Rules 26

and 27, 28 U.S.C., under Title 28, United States Code, Section 1651 and, generally, by United States Code, Const. Art. III, Sec. 1 and Sec. 2.1 and 2.3.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The Constitutional provisions, statutes and regulations involved in the immediate Petition are set forth in an Appendix submitted herewith and are as follows: Title 26, United States Code, Sections 1(c); 151(a); 162(a); 164(a); 165(a); 167(a); 172(a); 1374(a) and 7212(a), in conjunction with Title 18, United States Code Section 1505. Also, Title 28, United States Code, Sections 1343, 1443, 1447(d) and 1651(a), in

conjunction with Fed. Rules Civ. Proc., United States Code, Sections 1981, 1982, 1983 and 1985; United States Code, Const. Amends. I, V, VI and XIV; and Fed. Rules Cr. Proc., Rules 15(a), 16(a)(1)(A) and 21(a), 18 U.S.C.

STATEMENT OF THE CASE

This Petition seeks the Writ of Mandamus commanding the Honorable Carl O. Bue, Jr., Judge of the United States District Court for the Southern District of Texas, Houston Division, Cr. No. H-85-28, to recognize Petitioner's Sixth Amendment right to a speedy, fair and impartial trial in the subject fraudulently fabricated proceeding. The pertinent proceeding below arises

out of income tax liability litigation initiated earlier in the subject District Court where it is docketed as CA No. H-82-620 and CA No. H-84-4973, in in addition to the United States District Court for the Southern District of New York, No. 83 Civ. 6896 (M.E.L.). It appears that the proximity Petitioner was approaching to embarrassing administrative tactics, procedures, reports and files compiled and utilized by certain personnel within the Austin and Houston District offices of the Internal Revenue Service precipitated the false and fraudulent charge below that Petitioner threatened to shoot an Internal Revenue Agent in the due and

proper administration of his duties. The charge was filed, and the Indictment returned; (Recd. pp 11-14); a docket schedule set (Recd. p. 15); and efforts to execute and effect proper discovery and venue undertaken by Petitioner (Recd. pp 54-56), but the Government's counsel plurally and relentlessly commenced suppression of evidence and dilatory procedures which seriously jeopardize the right of Petitioner to a speedy and fair trial under the First, Fifth and Sixth Amendments and conceivably extending to Fourteenth Amendment safeguards (Recd. pp 11-75). Thus, this Petition for Writ of Mandamus invoking the Court's jurisdiction under Title 28, United

States Code, Sections 1254, 1291 and 1651, as pursued below in accordance with Fed. Rules Civ. Proc., Rule 60(b), 28 U.S.C., and related statutes including Title 28, United States Code, Sections 1343, 1443 and 1447(d), is submitted.

ARGUMENT

Relief via an extraordinary writ is essential to protect the rights of the accused under our facts for reasons appearing below in a Motion for Leave to File and Motion for Change of Venue presented to the trial Court, with affidavits in support thereof (Recd. pp 54 to 56, 69 to 72). So great a prejudice prevails against the Petitioner within the jurisdiction of the United

States District Court for the Southern District of Texas that fabrication of the subject fraudulent Indictment was enabled and further denials of Constitutional rights should be foreseen and prevented.

Argument I: Whether a fabricated criminal charge of threatening a Revenue Officer may be maintained under Title 18, United States Code, Section 1505, without refuting the accused's contention that he has confronted no such Officer engaged in the due and proper administration of the law at any time pertinent to the fabricated criminal charges.

The Indictment from the Court below

ambiguously and indefinitely purports to charge Petitioner initially with threatening to blow an Officer to pieces and of obstructing and impeding the due and proper administration of the law, citing 18 U.S.C. § 1505. However, the accused recognized the statements attributed to the witness in the Indictment as comprising a threat to be, in fact, false and fabricated. Therefore, efforts were instituted to secure a copy of such witness' complete statement or, alternatively, to interrogate such witness upon oral deposition. Fed. Rules Cr. Proc., Rule 15(a), 18 U.S.C. Faced with the foregoing challenge, the Government elected

to suppress the plenary statement and the pertinent witness and determined to force the accused to forego either his right to a speedy trial or his right to discovery. Petitioner submits that due process under the Fifth Amendment precludes any such limitation on his Constitutional rights, and the Government should be required to produce the pertinent recorded statement or the witness who made the statement, or both, promptly to expedite proper and full discovery. Fed. Rules Cr. Proc., Rules 15(a) and 16(a)(1)(A), 18 U.S.C.; United States Code, Const. Amends. I, V and VI; Hall v West, 335 F.2d 481 (5th Cir. 1964).

Argument II: Whether a fabricated criminal charge of threatening a Revenue Officer may be maintained under Title 26, United States Code, Section 7212(a), without refuting the contention of the accused that he has encountered no such Officer engaged in the due and proper administration of the law at any time pertinent to the fabricated criminal charges.

The second element of the Indictment alludes vaguely to allegations of a threat to blow an Officer to pieces and of obstructing and impeding the due and proper administration of the law citing 26 U.S.C. § 7212(a). Again, however, the

accused, Petitioner, recognized the statements alleged by the Indictment to comprise threats and intimidation to be, in fact, false and fabricated so justification was apparent to obtain a copy, or the original, of the pertinent witness' plenary statement or a setting to take the deposition of such witness, or both. Fed. Rules Cr. Proc., Rule Rule 15(a) and 16(a)(1)(A), 18 U.S.C. The Government's response in the second context was a dilatory repetition of the suppression endeavored with respect to the statement as well as the witness calculated to deny the accused his right to a speedy trial or proper pretrial discovery. Petitioner maintains,

similarly, that the subject dilatory and suppressive prosecutorial response is untenable, and production of the recorded statement sought or the deposition setting requested should be ordered immediately. Fed. Rules Cr. Proc., Rules 15(a) and 16(a)(1)(A), 18 U.S.C.; United States Code, Const. Amends. I, V and VI; Hall v West, 335 F.2d 481 (5th Cir. 1964).

Argument III: Whether the revelation of a continued conspiracy or campaign by influential officials and individuals within the State of Texas and particularly the Southern District of Texas calculated to discredit and

economically destroy the accused justifies the transfer of the criminal proceeding from the United States District Court for the Southern District of Texas to the United States District Court for the Southern District of New York where significant First Amendment rights precipitating the subject criminal charges were currently exercised.

On or about the 19th day of February, A. D., 1985, Petitioner filed with the Court below and served on Counsel of Record a Motion for Leave to File and Motion for Change of Venue with affidavits of two competent citizens of the Southern District of Texas verifying

facts meriting transfer of the subject proceeding to another District (Recd. pp 54 to 56 and 69 to 72). The Government has filed no affidavit or other evidence traversing the subject Motion so this Court's Writ of Mandamus should unequivocally direct a proper transfer in accordance with Petitioner's Motion. Fed. Rules Cr. Proc., Rule 21(a), 18 U.S.C.; United States Code, Const. Amends. I, V and VI; United States v Williams, 523 F.2d 1203 (5th Cir. 1975), rehearing denied 531 F.2d 791 (1976).

Argument IV: Whether Rules 15(a) and 16(a)(1)(A) of the Federal Rules of Criminal Procedure establish a right in

an accused to examine statements of the most serious witness against him for exculpatory and impeachment purposes.

Items 4 and 5 under Count One of the Indictment, as well as other elements of such Indictment, vaguely and indefinitely allege that one Revenue Officer Inge Hunka received a message from the accused in which the accused threatened to blow another Revenue Officer to pieces. Petitioner emphasizes that he has never knowingly seen or heard such party, even though such accused routinely maintains personal and professional negotiations with Internal Revenue Service personnel. Petitioner asserts, reiterates and

underlines further that he has never threatened to blow any Revenue Officer to pieces or to engage any illegal efforts against any Officer. Having been confronted with the fabrications of the Indictment, Petitioner observed the crucial necessity for further evaluation of the source, scope, nature, motive and full context of the subject witness' statement so a motion entitled a Rules 12, 15 and 16 Motion in Limine and for Dismissal was filed below (Recd. pp 57 to 61). Fed. Rules Cr. Proc., Rules 12, 15 and 16, 18 U.S.C. Petitioner's Counsel of Record at the time had previously, by letter, requested the Assistant United States Attorney of Record in the

proceeding to permit the taking of such witness' deposition, which request was declined, so at paragraph III of the the subject Motion, Petitioner requested the Court to enter an order authorizing the taking of depositions pertinent to certain witnesses, including the alleged author of the most serious fabrications against him in the person of Revenue Officer Inge Hunka. Against the background of unconstitutional indulgencies over a significant period of time summarized in the Motion for Change of Venue, with affidavits (Recd. pp 54 to 56 and 69 to 72), Petitioner elected to seek extraordinary relief in the form of the Writ of Mandamus to protect his

Constitutional rights rather than chance the likelihood of irrevocable abuse of the legal process in the premises. Title 28, United States Code, Sections 1254, 1291, 1343, 1443, 1447(d) and 1651; United States Code, Const. Amends. I, V, VI and XIV; Hall v West, 335 F.2d 481 (5th Cir. 1964); CBS, Inc. v Young, 522 F.2d 234 (6th Cir. 1975).

Argument V: Whether Rule 16(a)(1)(A) of the Federal Rules of Criminal Procedure establishes a right in one falsely charged with threatening a Revenue Officer to examine the Government's compilation of (1) returns; (2) schedules; (3) audits; (4) amended

returns; and (5) other pertinent data within the Government's custody and control which can serve an exculpatory or impeachment function in behalf of the accused.

The Government's case in the Court below is notoriously vague and fabricated. The initial source, as well as the scope, nature, motive and full context of the fabrication, cannot be soundly evaluated and contemplated from the contents of the Indictment and the information voluntarily furnished the accused by the Government. Thus, the extraordinary remedy of the writ of mandamus is essential to the protection

of Petitioner's Constitutional rights in light of the unique facts and circumstances affecting the judicial process below. Fed. Rules Civ. Proc., Rule 60(b), 28 U.S.C.; Title 28, United States Code, Sections 1343, 1443, 1447(d) and 1651. The motive affecting the most seriously fabricated allegations of the Indictment purportedly elicited from one Revenue Officer Inge Hunka appear to derive from a design to confuse and cover-up irregularities incurred and initiated during examinations of Petitioner's income tax liability. It follows that the most logical source for either contradicting or proving such irregularities and resulting motive is

the (1) returns; (2) schedules; (3) audit reports; (4) amended returns; and (5) any other pertinent data with respect to each indicated taxable year within the Government's custody and control which may serve an exulpatory or impeachment function in behalf of the accused. Therefore, this Petition seeks exercise of the Court's jurisdiction to compel compliance with Rule 16(a)(1)(A) of the Federal Rules of Criminal Procedure with respect to the described clarifying, exculpatory and impeachment evidence in the Government's exclusiove custody and control. Title 28, United States Code, Section 1651; CBS Inc. v Young, 522 F.2d 234 (6th Cir. 1975); United States v Hylton, 710 F.2d 1106 (5th Cir. 1983).

Argument VI: Whether Government attorneys consistent with Article VI of the Amendments to the Constitution of the United States may arbitrarily, unreasonably and capriciously pursue dilatory tactics in contravention of the accused's right to a fair, impartial and speedy trial.

With the institution of civil income tax related proceedings against the Government being the primer for the subject criminal fabrications and resulting Indictment, it follows further that the objective of the involved governmental employees is approached

directly with the quantity of confusion and delay they can bring to bear on the case. In furtherance of such improper goal, Government attorneys have attempted multiple dilatory tactics calculated to confuse and suppress the facts and resulting in an impairment of Petitioner's right to a speedy as well as fair and impartial trial (Recd. pp 11 to 53). Title 26, United States Code, Sections 1(c), 151(a), 162(a), 164(a), 165(a), 167(a), 172(a) and 1374(a); United States Code, Const. Amends. I, V and VI.

The series of Government motions referred to above have no practical and proper function in the fair

administration of justice under our facts. Thus, this Court should take note of the applicable prosecutorial irregularities and issue the Writ of Mandamus directing Respondent to honor Petitioner's right to a fair, impartial and speedy trial or dismiss such fraudulent prosecution, instanter.

Argument VII: Whether dismissal of the immediate action below on grounds of recalcitrant abuses of Sixth Amendment rights is proper.

A show cause order directed to the Presiding Judge below should mandate that such official, or the Government's Counsel, refute each of the contentions

set forth by Petitioner's Motions filed below as neither motion has been addressed in substance (Recd. 54 to 75). Attention to the issue of Petitioner's capacity to obtain a fair and speedy trial in the subject District raised by the Motion for Change of Venue, with affidavits (Recd. pp 54 pp 54 to 56, 69 to 72) should be ordered first by the Writ. Fed. Rules Cr. Proc., Rule 21(a), 18 U.S.C. Secondly, the Writ should require production of the requested exculpatory and impeachment items, including income tax filing and examination data for each pertinent tax period. Fed. Rules Cr. Proc., Rules 15(a) and 16(a) (1)(A), 18 U.S.C. Upon

the exhibition of the Government's unwillingness to conform to the requirements of Rules 15, 16 and 21 of the Federal Rules of Criminal Procedure, in addition to affording the accused a speedy trial, the Writ should direct that the prosecution be dismissed with prejudice. Fed. Rules Cr. Proc., Rules 15(a) and 16(a) (1)(A), 18 U.S.C.; United States Code, Const. Amends. V and VI; Hall v West, 335 F.2d 481 (5th Cir. 1964); United States v Hylton, 710 F.2d 1106 (5th Cir. 1983).

CONCLUSION: The Writ of Mandamus from the Supreme Court of the United States should issue, forthwith,

commanding the Court below, Respondent, to honor and secure Petitioner's right to a fair, impartial and speedy trial.

DATED: April 30, 1985

PETITIONER, PRO SE

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AFFIDAVIT OF SERVICE

Petitioner, Pro Se, certifies under penalties of perjury that the foregoing Petition for Writ of Mandamus was served on Respondent and Counsel below in triplicate with a single copy of the Record from Below by first class United States Mail this ____day of April, A. D., D., 1985, addressed to: Hon. Carl O. Bue, Jr., United States District Judge, and to: Hon. Nancy Holley, Assistant United States Attorney, both of the Southern District of Texas at 515 Rusk Avenue, Houston, Texas 77002.

PETITIONER, PRO SE

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED:

Constitional Provisions Involved:

United States Code, Const. Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Code, Const. Amend. V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Code, Const. Amend. VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

United States Code, Const. Amend. XIV, Sec. 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No. State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED (cont.):

Statutes Involved:

Title 18, United States Code, Section 1505: Obstruction of proceedings before departments, agencies, and committees.

Whoever with intent to avoid, evade, prevent, or obstruct compliance, in whole or in part, with any civil investigative demand duly and properly made under the Antitrust Civil Process Act willfully withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to interrogatories, or oral testimony, which is the subject of such demand; or attempts to do so or solicits another to do so; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House or any joint committee of the Congress-

Shall be fined not more than $5,000.00 or imprisoned not more than

five years, or both. June 25, 1948,c. 645, 62Stat.770; Sept.19,1962, Pub.L.87-664,§6(a), 76Stat.551; Oct. 15, 1970, Pub. L. 91-452, Title IX, § 903, 84 Stat. 947, Sept. 30, 1974, Pub. L. 94-435, Title I, § 105, 90 Stat, 1389; Oct. 12, 1982, Pub.L. 97-291, §402, 96 Stat. 1253.

Title 26, United States Code, Section 1(c): Unmarried individuals (other than surviving spouses and heads of households).

There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b) who is not a married individual (as defined in section 143) a tax determined in accordance with the following table:

If the taxable income is: Not over $500----the tax is 14% of the taxable income...

Title 26, United States Code, Section 151(a): Allowance of deductions.

In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

Title 26, United States Code, Section 162(a): Trade or business expenses. In general.

There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including--...

Title 26, United States Code, Section 165(a): Losses. General rule.

There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

Title 26, United States Code, Section 167(a): Depreciation. General rule.

There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence) (1) of property used in a trade or business, or (2) of property held for the production of income.

Title 26, United States Code, Section 172(a): Net operating loss deduction. Deduction allowed.

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.

Title 26, United States Code, Section 1374(a): Corporation net operating loss allowed to shareholders. General Rule.

A net operating loss of an elecing small business corporation for any taxable year shall be allowed as a deduction from gross income of the shareholders of such corporation in the manner and to the extent set forth in this section.

Title 26, United States Code, Section 7212(a): Attempts to interfere with administration of internal revenue laws. Corrupt or forcible interference.

Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States

acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined not more than $5,000, or imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than $3,000, or imprisoned not more than 1 year, or both. The term "threats of force", as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family.

Title 28, United States Code, Section 1343: Civil rights and elective franchise.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42; (2) To recover damages from any person

who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent; (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. June 25, 1948, c.646, 62Stat.932; Sept. 3, 1954, c. 1263, Sec. 42, 68Stat. 1241; Sept. 9, 1957, Pub.L. 85-315, Part III, Sec. 121, 71Stat.637.

Title 28, United States Code, Section 1443: Civil rights cases.

Any of the following civil actions or criminal prosecutions commenced in a State court may be removed by the defendnt to the district court of the United States for the district and division embracing the place wherein it is wherein it is pending; (1) Against any person who is denied or cannot enforce in the courts of such State a

right under any law providing for the equal civil rights of citizens of the the United States, or of all persons within the jurisdiction thereof; (2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the grounds that it would be inconsistent with tent with such law. (June tent with such law. (June 25, 1948, ch. 645, Section 1, 62Stat. 938).

Title 28, United States Code, Section 1447(d): Procedure after removal generally.

An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise. June 25, 1948, c. 646, Sec. 1, 62 Stat. 939;May 24, 1949, c. 139, Sec. 84, 63Stat. 102; July 2, 1964, P.L. 88-352, Title IX, Sec. 901, 78 Stat. 266.

Title 28, United States Code, Section 1651(a): Writs.

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid

of their respective jurisdictions and agreeable to the usages and principles of law. June 25, 1948,c. 646, 62Stat. 944;May 24, 1949,c. 139, Sec. 90, 63Stat. 102.

Title 42, United States Code, Section 1981: Equal rights under the law.

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R.S. 1977. 646, 62Stat. 944;May 24, 1949,c. 139, Sec. 90, 63Stat. 102.

Title 42, United States Code, Section 1981: Equal rights under the law.

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons

and property as is enjoyed by white citizens, and shall be subject to like purnishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R.S. 1977.

Title 42, United States Code, Section 1982: Property rights of citizens.

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. R.S. Sec. 1978.

Title 42, United States Code, Section 1983: Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. Sec. 1979.

Title 42, United States Code, Section

1985: Conspiracy to interfere with civil rights.

(1) Preventing officer from performing duties. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to or to injure such juror in his person or property on account of his having so

attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such party or witness in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws; (3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent

by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege, of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasionednby such injury or deprivation, against one or more of the conspirators. R.S. Sec. 1980.

Regulations Involved:

Fed. Rules Cr. Proc., Rule 15(a), 18 U.S.C. Depositions. When Taken.

Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court

may upon motion of such party and notice to the parties order that trestimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

Fed. Rules Cr. Proc., Rule 16(a)(1)(A), 18 U.S.C. Disclosure of Evidence by the Government. Information Subject to Disclosure. Statement of Defendant.

Upon request of a defendant the government shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government; the substance of any oral statement which the government intends to offer in evidence at the trial made by the defendant whether before or after arrest in

response to interrogation by any person then known to the defendant to be a government agent; and recorded testimony of the defendant before a grand jury which relates to the offense charged. Where the defendant is a corporation, partnership, association or labor union, the court may grant the defendant, upon its motion, discovery of relevant recorded testimony of any witness before a grand jury who (1) was, at the time of his testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to conduct constituting the offense, or (2) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which he was involved.

Fed. Rules Cr. Proc., Rule 21(a), 18 U.S.C. Transfer from the District for Trial. For Prejudice in the District.

The court upon motion of the defendant shall transfer the proceeding as to him to another district whether or not such district is specified in the defendant's motion if the court is satisfied that there exists in the

district where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial at any place fixed by law for holding court in that district. As amended Feb. 28, 1966, eff. July 1, 1966.

Fed. Rules Civ. Proc., Rule 60(b), 28 U.S.C. Relief from Judgment or Order. Mistakes; Inadvertance; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertance, surprise, or excusable cusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrisic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other

reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or other proceeding was entered or taken. A motion under this subdivision (b) does not have the finality of a judgment or suspend its operation. This rule does not limit the power of a court of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C. § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis. audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. As amended Dec.27,1946, effective March19,1948; Dec.29,1948, effective Oct.20,1949.